

**EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION  
WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND  
NORTHERN IRELAND PROTOCOL**

**14135/21+ADD 1**

**14135/21 ADD 2**

**14135/21 ADD 3+ 4**

**14135/21 ADD 5**

**COM(2021) 709 FINAL+ANNEXES**

**SWD(2021) 330 FINAL**

**SWD(2021) 331 FINAL, PARTS 1+2**

**SWD(2021) 332 FINAL**

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF  
THE COUNCIL ON SHIPMENTS OF WASTE AND AMENDING REGULATIONS  
(EU) NO 1257/2013 AND (EU) NO 2020/1056**

**COMMISSION STAFF WORKING DOCUMENT: SUBSIDIARITY ASSESSMENT  
GRID**

**COMMISSION STAFF WORKING DOCUMENT: IMPACT ASSESSMENT**

**COMMISSION STAFF WORKING DOCUMENT: EXECUTIVE SUMMARY OF THE  
IMPACT ASSESSMENT REPORT**

Submitted by the Department for Environment, Food and Rural Affairs

14 December 2021

**SUBJECT MATTER**

1. The European Commission has published a proposal for a new regulation on waste shipments to replace Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (EU WSR). The current regulation implements in EU law the provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention), and the Organisation for Economic Cooperation and Development Decision on the control of transboundary movements of wastes destined for recovery operations (OECD Decision). The UK is a Party to the Basel Convention in its own right and is also subject to the OECD Decision.
2. The EU WSR establishes a framework for the control of shipments of waste to and from EU Member States for recovery and disposal. The Regulation imposes

conditions on the types of waste that can be exported and sets out procedures that waste exporters must follow.

3. The overall objective of the proposal is to increase the level of environmental and public health protection from the impacts of unsound transboundary shipments of waste. The proposal seeks to address the problems identified in the EU WSR evaluation published by the European Commission in January 2020. The main findings of the evaluation were:
  - a. that optimal implementation of the EU WSR has been hampered by varying levels of interpretation, application and enforcement of the Regulations in Member States, combined with varying inspection regimes.
  - b. that insufficient supervision of the conditions under which exported wastes, especially non-hazardous wastes, are managed in destination countries is a major shortcoming of the WSR.
  - c. that illegal shipment of waste within, from, and to, the EU remains a considerable problem.
4. The Commission's proposal also responds to calls under the EU's European Green Deal and the Circular Economy Action Plan to revise the EU WSR with the aim of facilitating shipments of waste for reuse and recycling within the EU; ensuring that the EU does not export its waste challenges to third countries; and tackling illegal waste shipments.

## **SCRUTINY HISTORY**

5. The Parliamentary scrutiny history relevant to this Explanatory Memorandum is contained in Annex A.

## **MINISTERIAL RESPONSIBILITY**

6. The Secretary of State for Environment, Food and Rural Affairs has responsibility for this policy area.

## **INTEREST OF THE DEVOLVED ADMINISTRATIONS**

7. International waste shipments is a reserved policy area. The Devolved Administrations have an interest in this proposal due to the overall objective to increase the level of environmental and public health protection from the impacts of unsound transboundary shipments of waste. The Devolved Administrations each have their own obligations with regards to the effective management of waste, commitments to achieving a circular economy, and commitments to combatting international pollution. In addition, the four UK Environmental Regulators are responsible for the implementation and regulation of the waste shipments regime in the UK.

8. The Devolved Administrations also have an interest in the proposal due the EU WSR applying directly in Northern Ireland under the requirements of the Northern Ireland Protocol (the Protocol), and due to the potential impact of the proposal on GB as a third country.
9. The Devolved Administrations have been consulted in the preparation of this EM and their comments have been incorporated.

## **LEGAL AND PROCEDURAL ISSUES**

10.

### **i. Legal Base**

The legal basis for this proposal is Article 192 TFEU, relating to the protection of the environment and human health, given that the measures set out in the proposal pursue an environmental objective, namely to increase the level of protection of the environment and public health from the impacts of unsound transboundary shipments of waste.

### **ii. Voting Procedure**

Qualified Majority Voting.

### **iii. Timetable for adoption and implementation**

The proposal will be considered by the European Parliament and the Council of the European Union according to the Ordinary Legislative Procedure. The process is expected to take 12-24 months to complete.

## **POLICY IMPLICATIONS**

11. The Protocol provides that limited areas of EU law will continue to apply to the UK in respect of Northern Ireland. This EU legislative proposal, if adopted, will replace Regulation (EC) No 1013/2006, which is listed in Annex 2 of the Protocol to the Withdrawal Agreement. Article 13(3) of the NI protocol confirms that any amendments or replacement of the existing legislation, i.e., the proposed replacement EU WSR, will continue to apply directly in Northern Ireland.
12. With regards to the Protocol, officials are continuing to work intensively with their EU counterparts to discuss the proposals as outlined in the Government's Command Paper, as well as studying the EUs proposals published in response on the 13 October 2021. Lord Frost also remains in close contact with Vice President Sefcovic during this time. There is an opportunity for both parties to the Protocol to find more effective arrangements which deliver on everyone's interests.

13. The EU proposal for a new regulation on waste shipments contains several notable changes to the existing EU control framework for shipments of waste. These include the introduction of:

- a. A power for the European Commission to establish a harmonised calculation method for determining the amount of financial guarantee, or equivalent insurance, for shipments of notifiable waste.
- b. A right for operators to request an explanation if the Competent Authority has failed to determine an application to move waste within 30 days
- c. A provision for Competent Authorities to object to the import of some waste destined for recovery operations, if it is established that such shipments would result in domestic waste having to be disposed of or treated in a way that is not consistent with their waste management plans.
- d. A new application process for recovery facilities to achieve pre-consented status. Pre-consented status allows approvals to ship waste to these sites to be extended by two years.
- e. A requirement for information and documentation to be submitted electronically, via an electronic system which the European Commission must implement within two years of the coming into force of the regulations, or via an equivalent national system which is interoperable with the EU system.
- f. A requirement for Competent Authorities to make publicly available information on notifications of shipments they have consented or objected to, as well as on shipments of waste subject to the general information requirements (otherwise known as 'green list waste controls' or 'Article 18 controls').
- g. Measures to restrict the export of wastes to non-OECD countries. The export of non-hazardous waste will only be permitted to those non-OECD countries that have explicitly notified the European Commission of their willingness to receive EU waste, and which have demonstrated their ability to treat the waste in an environmentally sustainable manner according to criteria specified in the proposed new regulation.
- h. Measures that will require EU based waste exporters to obtain independent audits of the facilities they export waste to, to verify that these facilities are able to manage waste in an environmentally sound manner.
- i. A power for the European Commission to undertake investigations into illegal waste shipments and to conduct interviews with any natural or legal person engaged in waste shipments; to be delivered either by the European Commission coordinating investigations carried out by Member States, or by inspections directly carried out by the European

Anti-Fraud Office (OLAF) in Member States, including potentially in Northern Ireland.

14. The proposal also amends Regulation (EU) No 1257/2013 of the European Parliament and of the Council on Ship Recycling, to prohibit the export of end-of-life vessels containing hazardous waste to non-OECD countries; and Regulation (EU) No 2020/1056 on electronic freight transport information to update the references made in that Regulation to waste transport documents. Regulation (EU) No 1257/2013 also applies directly in Northern Ireland under the Protocol.
15. Depending on the outcome of negotiations on the final regulation, under the Ordinary Legislative Procedure, the Government may need to amend the Transfrontier Shipment of Waste Regulations 2007 to provide authorities in Northern Ireland with powers to implement some of the changes in the proposal. This will also depend on the outcome of current discussions on the Protocol.
16. The new Commission power to undertake investigations into illegal waste shipments and to conduct interviews with any natural or legal person engaged in waste shipments (paragraph 13, point i) is particularly significant as it would apply in relation to Northern Ireland. Defra officials are developing a plan to engage with EU Member States to better understand the level of support for this measure in the proposal.
17. Businesses in Great Britain (GB) that import or export waste from or to the EU would be impacted by the proposal. In particular, GB facilities wanting to receive EU waste for recycling will have to have been independently audited in order to verify that these facilities are able to manage waste in an environmentally sound manner (paragraph 13, point h). GB based operators, and the GB Competent Authorities for waste shipments, would also have the option of submitting information on waste movements between GB and the EU electronically (paragraph 13, point e).

## **CONSULTATION**

18. There has been no consultation by the EU with the UK on this proposal. In accordance with the Protocol, the changes made by this Regulation will be automatically applicable in Northern Ireland.
19. Defra officials are developing a plan to engage with EU Member States to better understand the level of support for the measures in the proposal.

## **FINANCIAL IMPLICATIONS**

20. There may be additional regulatory costs in Northern Ireland, depending on the outcome of negotiations and the requirements of the final regulation. It is too early, however, to assess the additional costs at this stage.
21. The Environment Act provides powers for the regulator in Northern Ireland to charge fees to meet costs incurred in exercising functions in connection with the regulation of international waste shipments. Defra officials will work closely with officials in the Devolved Administrations to assess potential future costs and whether this would result in differences for businesses in Northern Ireland and Great Britain.

A handwritten signature in black ink, appearing to read 'Jo Churchill', written in a cursive style.

**JO CHURCHILL MP  
PARLIAMENTARY UNDER SECRETARY OF STATE  
DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS**

## PARLIAMENTARY SCRUTINY HISTORY RELEVANT TO A:

**PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON SHIPMENTS OF WASTE AND AMENDING REGULATIONS (EU) NO 1257/2013 AND (EU) NO 2020/1056 (AND ADD 1-5)**

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**EM 6760/20, COM(2020)98 FINAL: COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS A NEW CIRCULAR ECONOMY ACTION PLAN "FOR A CLEANER AND MORE COMPETITIVE EUROPE"**

**DEFRA EM DATED: 25 MARCH 2020**

## SCRUTINY COMMITTEES' RECOMMENDATIONS:

<b>COMMONS</b>	<b>LORDS</b>
<b>SCRUTINY COMPLETED (ESC OUTCOME AGENDA 18 16/9/2020)</b>	<b>DRAWN TO THE ATTENTION OF (ENERGY AND ENVIRONMENT) AT CHAIR'S SIFT 8 1/4/2020</b>
<b>SCRUTINY NOT COMPLETED (ESC OUTCOME AGENDA 16) 6/7/2020</b>	

**EM 8151/12, COM(12)PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON SHIP RECYCLING**

**DEFRA EM DATED 11 APRIL 2012**

## SCRUTINY COMMITTEES' RECOMMENDATIONS:

<b>COMMONS</b>	<b>LORDS</b>
<b>COMPLETED SCRUTINY ON 25 APRIL 2012 AS RAISING ISSUES OF POLITICAL IMPORTANCE (REPORT 64, 10-12)</b>	<b>SIFTED TO THEN SUB-COMMITTEE D FOR EXAMINATION AND COMPLETED SCRUTINY ON 22 MAY 2012</b>

